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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Raymund F. Eich  
Williams, Morgan & Amerson, P.C.  
Suite 250  
7676 Hillmont  
Houston, TX 77040

EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1711

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DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,418

Applicant(s)

LAPLANTE ET AL.

Examiner

Jeffrey C. Mullis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 35-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

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Applicant's election without traverse of The species of EVOH, MXDX, tribenzoyltriphenylbenzene, cobalt, BHT, a multilayer rigid article, packaging articles comprising structural layers and PET, packaging articles not comprising scavenging layers, and multilayer rigid articles in Paper No. 6 is acknowledged.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-17, 25-30, 40-42 and 45-49 are rejected under 35 U.S.C. § 102(b) as being anticipated by Degrassi et al. (U.S. 5,547,765), cited by applicants.

Degrassi et al. disclose a composition which may be in the form of layers containing EVOH and MXD6.

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Claims 1-30 and 35-49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Akkapeddi et al. (U.S. 6,423,776) in view of Speer (either U.S. 5,211,875 or 5,498,364), both cited by applicants.

Akkapeddi et al. disclose a composition containing a metal salt catalyst at column 6 lines 7-9 and which includes blends of two or more aliphatic/aromatic polyamides such as MXD6. Note the paragraph bridging columns 4 and 5. Although the polyamides are disclosed to be bound to unsaturated moieties and thus derivatized by the unsaturated moieties, the instant claims do not exclude such and in any case it would appear that oxygen binding ability is present inherently even in compositions without the unsaturated bound moieties given that they patent at column 12 lines 63-67 discloses that the unsaturated moieties improve the oxygen binding ability. Patentees therefore imply that oxygen binding ability is present even without the unsaturated moieties though of course the unsaturated moieties greatly improve the oxygen binding ability. Note Examples 18-21 and column 15 lines 7-12 which disclose that the polyamides may be blended with EVOH although the Examples 18-21 are ambiguous as to whether applicants' specific polyamide is used in combination with EVOH.

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There are no clear specific examples in which applicants' combination of EVOH and MXD6 are used and there is no disclosure of the use of photoinitiators.

The secondary references disclose that photoinitiators may be added to facilitate oxygen scavenging in oxygen scavenging compositions.

It would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to use a combination of EVOH and MXD6 based on the disclosure of Akkapeddi et al. given that Akkapeddi et al. discloses the interchangeability of the various polyamides therein and in the expectation of adequate results absent any showing of surprising or unexpected results.

With regard to the use of photoinitiators, it would have been obvious to a practitioner having ordinary skill in the art at the time of the invention to use photoinitiators in the composition of the primary reference as taught by the secondary reference in order to facilitate oxygen scavenging absent any showing of surprising or unexpected results.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cdc  
August 8, 2002

Jeffrey Mullis  
Primary Examiner  
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